

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

WP(C).No. 34099 of 2007(H)

PETITIONER:

D. KULANDAL RAJ,
PRESIDENT, PUTHUMANA AKSHAYA FLAT OWNERS'
ASSOCIATION, V.P. MARAKKAR ROAD, EDAPPALLY TOLL,
EDAPPALLY-682 024.

BY ADV. SRI.KAYALATT KUTTYKRISHNAN
SMT.K.USHA
SRI.RAJESH. K.RAJU

RESPONDENTS:

1. STATE OF KERALA,
REP. BY SECRETARY TO GOVERNMENT,TAXES DEPARTMENT,
SECRETARIATE, THIRUVANANTHAPURAM.
2. THE TAHSILDAR,
KANAYANNUR TALUK, ERNAKULAM.
3. THE VILLAGE OFFICER,
EDAPPALLY, ERNAKULAM.

BY GOVERNMENT PLEADER SRI. GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 26/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ANTONY DOMINIC, J

W.P.(C).34099/2007

Dated this the 26th day of November, 2007

JUDGMENT

The challenge in this writ petition is against Ext.P8 and the revenue recovery steps taken by Ext.P10. By Ext.P8, the entire apartment complex of which the petitioner is the President of the Owners' Association, has been treated as one unit and on that basis the petitioner is assessed for the whole Building Tax.

2. Petitioner submits that there are eleven apartments, each owned by individual owners who had entered into an agreement for purchase of the undivided share of the land. Ext.P1 is the specimen agreement produced herein. According to the petitioner Ext.P1(a) shows that individual contribution has been made towards the cost of construction pertaining to each of the apartments and properly tax has been assessed. It is also stated that ownership has been individually certified and Ext.P4 certificate is produced. Petitioner also submits that the

electricity consumption is also in the name of each of the owners of the apartment. On this basis, it is contended that apartment owners have undivided interest in the land and that each of them individually own the apartments. Relying on these facts it is contended that each of the apartment is liable to be separately assessed for Building Tax, if any. However, petitioner submits that notice of assessment was issued to the president of the apartment owners' association to which Exts.P7 and P7(a) reply was also given. Documents were also produced in support of their case. Petitioner submits that despite the availability of evidence by Ext.P8, entire apartment is treated as one unit and on that basis assessment has been made, which is under challenge.

3. This Court has already held in several cases that owners of apartment or their association should be given opportunity to produce documents in support of their contentions that each of the apartment is liable to be assessed individually. In this case notice has been

issued to the petitioner. Though reply has been given along with supporting documents, none of these contentions have been adverted to in the order of assessment. Similarly none of the documents that were produced by the petitioner also has been considered while issuing Ext.P8.

4. Therefore, I hold that Ext.P8 order of assessment is one issued without adverting to the contentions raised. Accordingly Ext.P8 deserves to be quashed and I do so. Necessarily Ext.P10 notice of revenue recovery also has to set aside and I do so.

5. In the light of the above, I dispose of this writ petition directing the second respondent to issue fresh notice to the petitioner and also to the owners of the apartment and permit them to adduce evidence and thereafter pass revised orders adverting to the evidence available and the contentions raised. This the second respondent shall do with notice to the parties as

expeditiously as possible at any rate within eight weeks from the date of receipt of a copy of this judgment.

6. Petitioner shall produce a copy of this judgment before the second respondent for compliance.

**ANTONY DOMINIC
Judge**

mrCS